

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6812 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

A'BAD ELECTRICITY CO LTD

Versus

JM PANDYA

Appearance:

1. Special Civil Application No. 6812 of 1988
MR Tejas Barot, for M/s.Trivedi and Gupta for the petitioner.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

Heard the learned advocate Shri Tejas Barot for the petitioner. Though served none is present for the respondent.

2. In the present petition, the petitioner has challenged the order dated 26th February 1988, passed by the Regional Provident Fund Commissioner by which the petitioner was directed to pay damages for the delayed payment of provident fund/family pension fund/deposit linked insurance fund and administrative charges for the period from March 1985 to May 1985, October 1985, June 1986 and July 1986 totalling to Rs.36,338.25 ps. The petitioner has also challenged the order dated 2.5.88 passed by the same authority by which the review application of the petitioner seeking review of the above mentioned order came to be rejected.

3. It is not in dispute that the petitioner is one of the establishments covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions of the Act ("the said Act" for short). It is also not in dispute that the petitioner has been collecting and depositing the provident fund and other amounts for its employees from time to time. For certain delays in depositing the amount of provident fund, etc., for the month of March, April and May 1985, October, 1985 and June and July 1986 the respondent herein issued show cause notice to the petitioner on 9th March 1987 calling upon the petitioner why damages at such rates as deemed fit and upto the extent of the amount in arrears should not be imposed and recovered from the petitioner. The said notice was issued by the respondent in exercise of powers under section 14-B of the said Act.

4. In response to the show cause notice, the petitioner appeared before the respondent and by letter dated 31st March 1987 detailed the reasons for the delay in making the payment. It may be noted that there is no dispute about the delay and the extent of delay in depositing the amount in question by the petitioner. The respondent herein having not been convinced by the reasons stated by the petitioner, passed the impugned order dated 26th February 1988 wherein as mentioned above, the petitioner was ordered to deposit by way of damages an amount of Rs.36,338.25 ps. The petitioner being aggrieved by the said order dated 26.2.88 filed a review application before the same authority which also came to be rejected as mentioned above by the order dated 2.5.88.

5. In the present petition, the petitioner has raised a number of contentions. The learned advocate appearing for the petitioner has submitted that the impugned orders suffer from non-application of mind and that the authority below ought to have appreciated that

the petitioner had explained the delay satisfactorily and that there was no intentional delay on the part of the petitioner and that therefore no damages could have been recovered.

6. Upon perusal of the impugned orders, one finds that in so far as the same pertains to the period other than for the months of March, April and May 1985 and June 1986, the respondent had taken into account the material on record and had come to the conclusion that the petitioner was guilty of delay in depositing the amounts in question. The fact that there were holidays in between would not come to any avail of the petitioner since the petitioner has been depositing the amounts under the said Act since long and therefore the said defence was not accepted. To the above extent, I find myself in agreement with the view taken by the authority below and the discretion exercised by the respondent cannot be interfered with in exercise of powers under Article 226 and 227 of the Constitution of India.

7. With respect to the rest of the period, namely, for the period from March to May 1985 and June 1986, different consideration shall have to apply. The petitioner had in its reply to the show cause notice given on 31st March 1987 had contended that there were civil disturbances in the city of Ahmedabad and that there were long spell of curfew in the area where the petitioner's office was situated which prevented the petitioner from depositing the amount in time. The authority below in its impugned order dated 26th February 1988 has brushed aside these contentions of the petitioner on the short ground that the establishment has failed to lead proper evidence in support of the said statement and as such a bald statement cannot be accepted. The petitioner, in the present petition, has on oath stated that on 12.5.87 the petitioner Company through its Officers wanted to file notifications issued by the Police Commissioner of the city of Ahmedabad regarding imposition of curfew in various areas of the city, its extension from time to time and the period of relaxation on different dates. The petitioner has further stated that, however, they were informed by the respondent that it was a matter of common knowledge that curfew was in fact imposed and that therefore, it was not necessary for the petitioner Company to file any notification issued by the Police Commissioner. Along with the review application also, the petitioner had made similar statement. Having made the statement as mentioned above, the petitioner had also filed certain documents along with the review application being xerox

copies of the letters addressed by the Commissioner of Police, Ahmedabad to the petitioner on 20th April 1987. While disposing of the review application, these documents have not been taken into account and the respondent has disposed of the review application only stating that it is difficult to advise the Recovery Officer not to proceed with the recovery of damage already sanctioned since the authority finds no reason or justification to interfere with or modify the order dated 26th February 1988.

8. In the reply affidavit filed by the respondent, except denying the averments on this issue no further light is thrown by the respondent regarding the developments before the authority with respect to the stand of the petitioner that at the first instance the relevant documents were sought to produced and at any rate along with the review application, the same were made available to the respondent authority.

9. The legal position regarding the powers of the Provident Fund Commissioner under section 14-B of the said Act is well settled. In the case of Regional Provident Fund Commissioner v. S.D.Hoshairpur, reported, AIR 1997 SC 3645, the Hon'ble Supreme Court had categorically held that the Regional Provident Fund Commissioner is given discretion only to reduce the percentage of damages and he has no power to waive the penalty altogether.

10. Considering the factual aspects arising in the present petition, I find that the respondent had erred in not looking to the grievance of the petitioner that the delayed payments for the month of March to May 1985 and June 1986 were on account of disturbances in the city of Ahmedabad leading to spells of extended periods of curfew. The authority has, therefore, not examined the question in its proper perspective. When the petitioner had set out the said claim at the outset in reply to the show cause notice, has also averred that documents were sought to be produced during the course of hearing and had also actually produced the same along with the review application, to brush aside the defence by merely stating that such a bald statement cannot be accepted and thereafter rejecting the review application without going into the merits of this question by simply saying that the authority does not find any justification, in my view was not correct.

11. In the result, I find that the petition is required to be remanded to the respondent authority for

reconsidering the question of penalty for the period from March to May 1985 and June 1986 and deciding the same afresh after taking into consideration the documents produced by the petitioner along with the review application. It will be open for the respondents to pass fresh order in accordance with law after considering these documents. In view of the fact that the present petition is coming before this Court long time after the petition was admitted, the question of petitioner not having filed appeal, though statutorily available, is not being raised against the petitioner so as to reject the petition on that ground alone.

12. In the result, the petition succeeds in part. The impugned orders dated 26th February 1988 and 2nd May 1988, in so far as they relate to the period from March to May 1985 and June 1986, are quashed and set aside. The respondent authority is directed to reconsider the question of imposition of damages under section 14-B of the said Act in light of the observations made hereinabove. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)